

PHILEMENA MAAHS,	:	Order Vacating Decision and
Appellant	:	Remanding Case
	:	
v.	:	
	:	Docket No. IBIA 92-177-A
ACTING PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 17, 1992

Appellant Philemena Maahs seeks review of an April 22, 1992, decision issued by the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to take certain property into trust status for appellant. For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision, and remands this case to the Area Director for further consideration.

At some time before April 7, 1992, appellant applied to the Puget Sound Agency, BIA, to have fee property which she owned taken into trust status. The property is described as Lot 1, Plat of Meadow Estates, in Snohomish County, Washington. It appears that the lot is part of a residential subdivision.

After completing a preliminary assessment of the application, by memorandum dated April 7, 1992, the Superintendent, Puget Sound Agency, forwarded the application package to the Area Director for review. The Superintendent recommended that the property be taken into trust, stating, inter alia: "We feel that the applicant needs assistance in handling her land transactions and does not have the full knowledge of realty matters." The Superintendent also stated: "It appears that this parcel is approximately one mile east of Tulalip Allotment Number 75."

By letter dated April 22, 1992, the Area Director denied the application. The Area Director stated:

Title 25 of the Code of Federal Regulations, Part 151.3(b)(1) states

Subject to the provisions contained in the acts of Congress which authorize land acquisitions or holding land in trust or restricted status, land may be acquired for an individual Indian in trust status when the land is located **within the exterior boundaries of an Indian reservation, or adjacent thereto.**

Since the property is neither within the boundaries of the Tulalip Reservation, nor adjacent to the Reservation, the proposed acquisition would be in conflict with the regulations. We therefore must deny your application. If we did have authority to approve this transaction, we could not do so at this time because the need stated on the application to have the property acquired in trust is insufficient. You indicate that you "want to set up a trust base for ourselves and for our children & grandchildren so that our children & their children don't lose their Indian heritage and tradition." Having the land transferred to trust does not indicate a valid reason why you need the United States to have jurisdiction over the property.

(Letter at 1; emphasis in original).

The Board received appellant's notice of appeal from this decision on June 1, 1992. The notice of appeal states in its entirety:

I applied for my property to be put into trust land but was denied. I feel we are as close to the Tulalip reservation as we could be, a thirty foot road is the only thing that separates us from the reservation.

I would like to live on the reservation because we do not understand the Realty Laws and would like to be protected by the Federal Government.

Tulalip Tribes don't want to let you vote, or have anything to say whatever goes on with the Tribe. Also they won't enroll your child if you don't live on the reservation. That was why I stated in my first letter of not wanting my children or grandchildren in losing their Indian heritage & tradition.

Therefore I would be pleased if you would reconsider my request to put our land into trust.

No further briefs were filed.

BIA has considerable discretion in determining whether or not to take land in trust status. The Board has held that it does not have jurisdiction to substitute its judgment for BIA's, but has authority to determine whether BIA gave proper consideration to all legal prerequisites to the exercise of its discretion. City of Eagle Butte, South Dakota v. Aberdeen Area Director, 17 IBIA 192, 195-96, 96 I.D. 328, 330 (1989). The Board has also held that the administrative record must support BIA's decision. Ross v. Acting Muskogee Area Director, 18 IBIA 31, 34 (1989).

In this case, the Area Director reached the legal conclusion that the proposed acquisition was in conflict with the regulations because the property is not adjacent to the reservation. The Board has full authority to review that conclusion. Baker v. Muskogee Area Director, 19 IBIA 164, 169,

98 I.D. 5, 7 (1991). If appellant's statement concerning the location of her lot is correct, the Area Director's conclusion that the lot is not adjacent to the reservation may be erroneous. The term "adjacent," which is not defined in 25 CFR Part 151, is a term of flexible meaning, as reflected in the definition in Black's Law Dictionary (5th ed. 1979): "Lying near or close to; sometimes, contiguous; neighboring. Adjacent implies that the two objects are not widely separated, though they may not actually touch." Because the record does not include an exact statement of the lot's location, vis-a-vis the reservation boundary, 1/ or a discussion of reasons for the Area Director's conclusion that the lot is not adjacent to the reservation, the Board cannot sustain that conclusion.

The Area Director also indicated that he would have declined to take appellant's property into trust status "at this time" based upon the reason appellant gave for requesting trust acquisition in her application. The Board does not reach the question of whether the Area Director's decision could be sustained on that basis. On remand, if the Area Director determines after further analysis that appellant's lot is adjacent to the reservation, and thus eligible for trust acquisition under the regulations, he should reconsider appellant's need for the acquisition, including the explanation she made in her appeal to the Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Portland Area Director's April 22, 1992, decision is vacated, and this matter is remanded to him for further consideration.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge

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1/ As indicated above, the Superintendent stated that the lot was about a mile from Tulalip Allotment No. 75. The significance of this fact is not clear.